

# Notice of Allowability

Application No.

09/645,292

Examiner

Jean Janvier

Applicant(s)

SMITH ET AL.

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## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 09/08/2006.
2. ☒ The allowed claim(s) is/are 21,23,25 and 26.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### **Response To Applicant's Arguments**

**First,** the Applicant's remarks regarding the rule 105 requirement has indeed satisfied the Examiner's factual inquiry and curiosity and thus, the response is deemed proper or acceptable.

Second, the following Action constitutes a response to the Applicant's arguments concerning the previous art rejection. In other words, the Applicant's remarks are moot in view of the present's Action or favorable decision.

### **Response To Applicant's Amendment**

Newly submitted claims 33-54 are directed to an invention that is independent or distinct from the invention originally claimed in claims 21-26.

Indeed, independent claims 33 and 46 feature two separate inventions different from the invention originally presented in claims 21-26. For example, claim 33 recites, inter alia, the step of "processing photographic likeness of a user by identifying at least facial features or body features on the photographic likeness of the user, comparing the identified features with the zero or more corresponding targeted profiles of each of the at least one content to select a particular one of the at least one content that matches the user's profile". (Compared to claim 21, no metrics, "confidence factors that decay", indices corresponding to a market segmentation present).

Additionally, claim 46 recites the step of analyzing data elements, including photographic likeness, related to a user's profile to identify deficiency therein, finding at least one content having market segmentation variables that relate to the deficiency (deficient data elements) ...

Since the Applicant has received an Office Action on the merits for the originally presented invention (claims 21, 23, 25 and 26), this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 33-54) are herein being withdrawn from further consideration as being directed to a non-elected invention and will be canceled by an Examiner's amendment. See 37 CFR 1.142(b) and MPEP § 821.03.

#### **EXAMINER'S AMENDMENT**

An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Newly added claims 33-54 are herein being canceled for presenting a non-elected invention.

**Please cancel claims 33-54.**

**In claim 1**

In claim 1, line 11, after "indices" and before "user's preferences", please delete "identifies" and replace it with - -identify- -.

#### **Reason For Allowance**

Claims 21, 23, 25 and 26 are currently pending in the Application, while the other claims have canceled.

The following is an Examiner's statement of reasons for allowance:

Here, the prior art of record taken alone or in combination does not reasonably teach the limitations of claim 21 or more particularly the steps of **assigning metrics to data elements**, including photographic likeness, in the user's collected profile, **wherein the data elements include confidence factors that decay over time, creating, using the assigned metrics, data indices corresponding to the market segmentation variables**, wherein the data indices identify user's preferences or purchase habits with respect to market segmentation variables, comparing the data indices to the market segmentation variables of the target profile associated with each content to select content that best matches the data indices. Having said that, claims 21, 23, 25 and 26 are said to be allowable or patentable over the prior art of record.

Any comments considered necessary by Applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**<http://eddiebauer.com> features a web site for purchasing clothes online, where photographs or pictures of people wearing different clothing for sales are shown.**

**USP 5,990,901A to Lawton** discloses a system and method for automatically editing digital images. An image to be edited is selected and registered with a model that is an abstract of features and attributes common to a category of images to which the selected image belongs. In the illustrated embodiment, a human face is used as an example of an image to be edited and

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the matching model is a representation of features and attributes common to all human faces. Many other images of objects may also be edited using the techniques of the invention, as long as a general class of objects to which an image belongs is amenable to being represented by a model comprising a set of common features or attributes. A library of different models is available to the user for selecting the model matching the image to be edited. The library includes different models of the same object in different orientations and may also include models of different objects. After the appropriate model is selected, the user is prompted to register the details of the selected image with the generalized features and attributes of the selected model. Editing processes or tools, which are linked to the model, are then automatically applied to the image in order to perform a desired editing function. In addition to applying editing techniques to existing images in a larger image, the invention enables a user to paste and blend images into another, larger image--e.g., create a morphing effect by pasting one persons head over the head of another in an original image (See abstract).

**USP 5,495,338 to Gouriou** discloses a process for making up the face, in particular the eyes, and a device for carrying it out, is disclosed comprising determining the different individual colors of the iris of the eyes comprising the iris contour color and the iris sparkle color(s) and using these iris determined colors for selecting make-up products to effect personalized make ups of the face, and of the eyes (See abstract).

**USP 5,478,238A to Gourtou** discloses a system that relates to a method and Apparatus for determining the color of a foundation makeup comprising a device for measuring the color of the skin on an arm of a person computing and determining the skin color measured and comparing same with a data base containing a palette of reference foundation colors substantially

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covering a representative sample of a population of given individuals, the data base containing at least the color of the skin for each individual and a reference foundation color associated with one or more of the skin colors in the data base; and determining from the data base the foundation color associated with the skin color to reproduce the skin color in the data base corresponding to the measured skin color of a person (See abstract).

USP 4,539,585 to Spackova discloses a pre-viewer that provides for the dynamic viewing of an article desired to be worn by the user in a complete series of poses without actually and physically trying on the article. The image of the article is computer generated and a large plurality of articles are available for previewing. The user pre-records or creates in real-time a series of poses, which are time-framed and position orientation coded, which coded information is read by the computer and the computer generated article image is then re-imaged in accordance with the accessed coded information, and the re-imaged article image and the user video image are then video mixed, optically mixed, or superimposed in digital image storage memory, so that a user plus article composite image may be viewed by the user. The pre-viewer is useful for previewing various articles or accessories, or combinations thereof, such as eyeglasses, hats, hairstyles, wigs, make-up, cosmetic surgical changes, clothing, furnishings, and automobile accessories (See abstract).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean Janvier whose telephone number is 571-272-6719. The examiner can normally be reached on Monday-Thur 9:00-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric W. Stamber can be reached on 571-272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jean Janvier  
Examiner  
Art Unit 3622

09/27/07

JEAN D. JANVIER  
PRIMARY EXAMINER

A handwritten signature in cursive script that reads "Janvier Jean Dario".